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April 5, 2012

FILED/ACCEPTED

VIA HAND DELIVERY

APR - 5 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW, TW-A325
Washington, DC 20554

Federal Communications Commission
Office of the Secretary

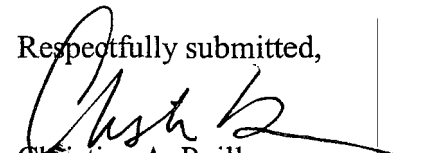
**Re: Amendment of the Commission's Rules
Related to Retransmission Consent
MB Docket No. 10-71**

Dear Ms. Dortch:

Attached is a letter being submitted on behalf of the Sinclair Broadcast Group, Inc.

Please direct any question you may have regarding this matter to the undersigned.

Respectfully submitted,



Christine A. Reilly

SINCLAIR BROADCAST GROUP

BARRY M. FABER

Executive Vice President/General Counsel

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April 5, 2012

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 Twelve Street, S.W.
Washington, D.C. 20554

Re: Amendment of the Commission's Rules Related to
Retransmission Consent, MB Docket No. 10-71

Dear Chairman Genachowski:

As someone who routinely negotiates retransmission consent agreements, I am writing in response to the letter you recently received from Rocco Commisso, Chairman and CEO of Mediacom Communications, Corporation, commenting on the above referenced matter, purportedly on behalf of "smaller cable operators."

While I must give Mr. Commisso credit for trying, Mediacom, the nation's seventh largest cable provider with revenues in excess of \$1.5 billion and approximately three million revenue generating units, is clearly not a small cable company in need of government assistance. I also take exception with much of the substance of Mr. Commisso's letter. The heart of Mr. Commisso's plea for government intervention is that broadcasters are able to assert too much leverage over the small cable operators, a thesis that is facially suspect given that broadcast stations, despite providing close to fifty percent of all ratings (and generally around 95 of the top 100 shows each week), are reported to receive well less than ten percent of the total programming expenditures by cable companies.¹

In order to truly understand where the leverage lies in retransmission consent negotiations, I respectfully suggest that Mediacom be asked to open up its books so the FCC and the public can understand how much of monthly subscription fees go to

purchase rights to low rated programming on cable channels that most subscribers infrequently or never watch. At the same time, in light of reports of cable fees increasing by amounts significantly in excess of fees paid to broadcasters² (and the large increases consumers have suffered for many years prior to the payment by cable operators of retransmission consent fees), it would be helpful for the FCC to examine Mr. Commisso's claim that RTC price escalation is responsible for the exorbitant cable rate increases imposed on the public over the last several years. Moreover, Mr. Commisso's statement that retransmission rates are escalating at a pace that far outstrips inflation should be seen as the red herring that it is, given that rates started from zero as the result of (1) prior government regulations permitting carriage of broadcast stations by cable companies without consent or direct payment and (2) the exercise of monopoly power by cable companies for many years following the elimination of such regulation.³

While some truth may exist in Mr. Commisso's claim that smaller systems are being charged higher fees than the largest cable companies, this results not from broadcasters asserting leverage on small cable companies, but rather from broadcasters being forced to accept below-market rates from these large companies which enjoy tremendous leverage over most broadcasters because of their massive economic size and subscriber footprint. It is a rare broadcaster indeed that can withstand the pressure of threats by oligopolists like Comcast (market cap of \$82 billion and more than 22 million cable subscribers) and Time Warner Cable (market cap of \$25 billion and more than 12 million cable subscribers) to remove stations from their line-ups absent price capitulation from the broadcaster. While smaller multi-channel video program distributors may not enjoy the same amount of leverage, the relatively low fees they pay to broadcasters (as compared to what cable channels receive) for their extremely popular programming indicates that all of cable's existing leverage is sufficient without additional government assistance and that the entire cable industry is enjoying the benefit of this downward pressure on pricing.

² See, e.g., "Time Warner Cable's price increases don't even make sense" *Los Angeles Times*, December 27, 2011 (articles.latimes.com/2011/dec/27/business/la-fi-lazarus-20111227), detailing a \$6 increase for broadcast plus basic cable channels, which a Time Warner Cable spokesman blamed on fees charged for access to cable channels such as ESPN and Fox Sports, and installation cost increases of as much as \$20. See also the December 6, 2011 Wall Street Journal article, "Cable-TV Honchos Cry Foul Over Soaring Cost of ESPN" (<http://online.wsj.com/article/SB10001424052970204083204577080793289112260.html>) detailing the cost increases caused by fees paid to ESPN and regional sports networks and "Behind

Contrary to Mr. Commisso's statements on the use of outside counsel by broadcasters to negotiate retransmission consent agreements, it is Sinclair's experience that the much more common practice is for small cable companies to employ outside counsel to negotiate on their behalf. In fact, during recent year-end negotiations, Sinclair dealt repeatedly with four law firms or consultants which together represented a total of approximately seventy-five (75) independent cable companies. Moreover, despite the lack of any other relationship between these cable companies, it was quite clear to Sinclair during these negotiations that each law firm was using information gained in one negotiation as part of their negotiation for all other cable companies they represented. Indeed one of these law firms, trumpets on the home page of its website that, "Through our representation of the American Cable Association and many ACA member companies we bring substantial depth and expertise to a wide range of legal matters related to the distribution of multichannel video services," (www.cm-chi.com, last visited 3/28/12)⁴

As to Mr. Commisso's specific suggestion that small cable companies be permitted to have large cable companies negotiate on their behalf, I note that this practice already exists where an ongoing relationship exists between the cable providers; Time Warner Cable, for example, routinely negotiates on behalf of Bright House Networks, a company owned by a partnership in which Time Warner Cable has an interest.⁵ Moreover, in Sinclair's experience, large cable companies routinely insist on receiving the right in retransmission consent agreements to add cable systems under the agreements when management services are provided by the cable company to other non-owned cable systems. To allow for the expansion of this practice to permit joint negotiation where no other relationship exists is not only unnecessary given the facts, but would require extensive antitrust analysis to make sure no laws are broken.

Finally, Mr. Commisso cites to 31 RTC-related service disruptions he claims occurred in 2011. Even assuming the accuracy of this claim (and I believe some of these disruptions may have involved duplicated and/or out-of-market stations), given the literally thousands of retransmission consent negotiations that occurred in 2011 and early 2012 (Sinclair alone completed more than three hundred deals), such a figure hardly represents a calamity justifying the extraordinary governmental assistance sought by

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Mediacom. Frankly, with all due respect, in Sinclair's experience it is the continued perceived potential for governmental assistance that has caused cable companies, like Mediacom, to resist market forces which would otherwise work to avoid acrimony and potential service disruption.

Please let me know if you would like to discuss this matter in greater detail.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Barry M. Faber".

Barry M. Faber
Executive Vice President/
General Counsel

cc: The Honorable Mignon Clyburn
The Honorable Robert McDowell
Mr. William Lake